

TOWN OF TRURO
BOARD OF SELECTMEN
MEETING OF TUESDAY, JULY 24, 2007

The Truro Board of Selectmen met for their weekly session on Tuesday, July 24, 2007 at 6:00 p.m. at the Truro Town Hall, 24 Town Hall Road, Truro. In attendance were: Chairman Alfred Gaechter, Vice-Chairman Gary Palmer, Clerk Christopher R. Lucy, Curtis Hartman, Jan Worthington, Town Administrator Pamela Nolan, Assistant Town Administrator Charleen Greenhalgh, Administrative Secretary Julie DuPree, Martha Nagy, Bill Golden, Bob Weinstein, Karen Snow, Chief Prada, Atty. David Reid, Atty. Jay Murphy, Anne Venezia, Norman Edinberg, Jerry Nelson, Raymond Johnson, Debbie Peters, Larry Lown, Betty Bingham, Pat Wheeler, Dotty Morris, Girard Smith, Judy Howard, Kevin Mullaney of the Banner, Mary Ann Bragg of the Cape Cod Times, and Steve Desroche of the Cape Codder.

Mr. Gaechter convened the meeting at 6:02 p.m.

Minutes: Mr. Palmer moved to approve the minutes of the regular and executive sessions of July 17, 2007 as written, and to hold the executive session minutes. Mr. Hartman seconded it. **Vote: 5-0, unanimous.**

Public Comment: None.

CC construction groundbreaking: Ms. Nolan announced that a groundbreaking ceremony with refreshments will be held at noon on July 26th at the construction site and the library.

Since the Planning Board had not yet arrived, other agenda items were taken out of order.

Resignation: Mr. Gaechter moved to accept the resignation of Donna O'Brien as the alternate representative to the Cape Light Compact and that a letter of thanks be sent. Mr. Hartman seconded it. **Vote: 5-0, unanimous.**

Habitat deed restriction for CC project: Ms. Greenhalgh gave the Board an overview of this restriction, showing them the area it included. **Mr. Palmer moved to approve the Habitat and Open Space Conservation Covenants as written. Mr. Hartman seconded it. Vote: 5-0, unanimous.**

Request from Provincetown: The Provincetown BOS has written the Board and requested that they endorse their position on the dune shacks. Mr. Hartman encouraged his colleagues to do as Provincetown did and send a letter to the CCNS. Mr. Palmer felt that they had already stated their position on this and that they had also appointed a representative to the subcommittee on dune shacks. If they do write a letter, he thinks they should get input from their CCNSAC representative, Butch Francis. Mr. Gaechter said he thought the Provincetown letter was somewhat aggressive, but agrees they should get input from others. Ms. Nolan was directed put this matter on the agenda in two weeks and invite Mr. Francis, Ms. Johnson and Ms. Boleyn. They are to receive a copy of the Provincetown letter.

Planning Board: Subdivision regulations: Ms. Snow led the Board through the changes to the regulations. Some of Mr. Lucy's comments and suggestions were incorporated and some were

not applicable. The major change had to do with landscaping and requiring information on specimen trees on the plans. They have added another layer to keep from cluttering a plan with too much. It is a much more specific document now. It is not perfect, and she added that they are sure as they use it, they will find things they wish to change. Ms. Greenhalgh reviewed for the Board the specific sections the Planning Board focused on in this revision. The fee schedule has been revised also, and application forms included. Mr. Hartman asked if she could sum up the revision to say that it is now clearer and easier to follow. Ms. Snow said that it is, and is now in a logical order and a far more specific document. Ms. Greenhalgh said that surveyors and engineers are appreciative of the changes as well. The Planning Board will hold their public hearing on August 14th at the COA. Mr. Palmer questioned if the document governs the Planning Board as well as the applicant and was told that it does. Ms. Snow and the Planning Board were commended for their work.

Goals and Objectives for FY08: Mr. Gaechter asked the BOS to individually review the FY07 goals to see what has been done. They will close those completed, continue those that are on-going, and add new ones as needed when this is put back on the agenda.

Curb Cut on Route 6 for Rice property: Attorney Murphy explained this application from John Rice was to gain access to his property on Professional Heights Road, a location which has had various businesses operating there in the past. The top area of the subdivision is in the commercial district. He gave the Board an overview of the events surrounding the appeal of a permit issued by the Building Inspector, Mr. Rice's application to MAHighway for a curb cut on Route Six, his subsequent purchase of property on Route Six so that he would have enough frontage for the curb cut's required radius, and the decision of the ZBA to overturn the Building Inspector and prohibit Mr. Rice from operating a contractor's yard. Commercial operation on the site has ceased. Mr. Rice is going to sell the property now; he doesn't want to fight the neighbors or the town. He needs this curb cut to sell the property for commercial use. The State has already approved this curb cut for office/storage business. If another type of business wanted to locate there, it must go before the State and the curb cut would have to be re-examined by the BOS. The cut will do no damage to the highway. Both the Fire Chief and Police Chief have examined this and have no problem with this. The DPW Director is an abutter, and so he has not made any recommendation. Ms. Worthington questioned if the former restaurant located on the Rte. 6 property has a curb cut, and why that could not be used. Mr. Murphy told her that it is actually located in the residential district and since no business has operated there for quite a time, it has reverted to residential use. Attorney Murphy explained in more detail the reason Mr. Rice needed more area on Rte. 6 so he could consent to the use of it for the radius for the curb cut. He stressed that anyone buying the property for commercial use would have to go before the Planning Board for site plan review. Ms. Worthington questioned why Mr. Rice could not just sell the property as residential. Attorney Murphy told her that the property is not residential. It is completely within the commercial zone. Mr. Rice cannot use Professional Heights Road for a commercial use. He wants to recoup his expenses and sell the property. Mr. Palmer asked for an explanation of the permitted uses. Attorney Murphy told him that it was office and storage for retail/wholesale trades, basically, an office and space to store the things that they sell to people. This sparked discussion on the potential use of the property by an oil company.

Mr. Gaechter raised the idea of conditioning approval of the curb cut with a review before the BOS. He asked if Mr. Rice would have a problem if approval was given upon a discussion with a potential buyer as to the use. Attorney Murphy thought that should not be a problem. Mr. Lucy asked how far back from Highland Road the commercial district ran. Attorney Murphy told him it extended 300' south from Highland Road; the entire lot is in the business zoning district. Mr. Lucy questioned drainage onto Route Six, noting there were no provisions on the plan the BOS had. He was shown that these things were all addressed in the actual plan. Mr. Palmer asked about the status of the suit on the decision of the ZBA. Attorney Murphy said the suit will remain open until such time as Mr. Rice can sell the property. Mr. Gaechter again raised the possibility of approval with contingencies. Both Mr. Lucy and Mr. Hartman felt that the BOS did not have the authority for that; it would have to go to ZBA. Mr. Lucy suggested they ask for a review by the ZBA. Mr. Gaechter said he thought the BOS could act in this way because they have no DPW sign-off, and how it affects surrounding properties and whether it is detrimental to the neighborhood are things the BOS have a right to determine. Ms. Worthington felt if they give approval for the curb cut that way, it will make it more difficult to control, and they should base their decision on what they have before them. Mr. Gaechter disagreed with that. He invited the abutters to comment. Attorney David Reid spoke on behalf of some of the abutters. He said that the letter from Attorney Ford contained information at odds with what had been said this evening. He read from the letter ".....it is my understanding that the case can be concluded (by Mr. Rice withdrawing his appeal and agreeing to abide by the decision of the Board of Appeals) provided that the Board of Selectmen acts favorable on his application for a curb cut permit allowing access from Route 6 to his property." Attorney Murphy read portions of his letter to Attorney Ford in which he clarified Mr. Rice's position that he is not dismissing the lawsuit appealing the ZBA decision, but is not seeking to enjoin the effectiveness of the cease and desist order issued by the ZBA. Attorney Reid explained the basis of the ZBA decision, and discussed the use of a private road to access commercial property. The Board discussed a question on the boundary lines of the commercial zone. Attorney Murphy showed the Board where the commercial zone extended and where it ended on Route Six. This raised a question as to how the highway layout area was zoned. Mr. Hartman said that it was a dead zone.

Because this discussion was going to extend beyond the time allotted, the Concert Committee agreed to have their agenda item rescheduled for two weeks from now.

Discussion continued. Attorney Reid said Mr. Rice doesn't have access to use the property commercially now, and the BOS granting the curb cut will give him what he doesn't have now. Attorney Murphy said that the BOS are only to look at issues of a curb cut, which has already been approved by the State, and for this Board to say no amounts to a denial of Mr. Rice's use of his property. The BOS are not the Zoning Board, not the Planning Board. Mr. Gaechter told him that they are aware of that. Attorney Reid said the storage has been a problem for the neighbors--the storage of heavy equipment in a residential neighborhood. Mr. Hartman said that Mr. Rice is on record as saying he will not do anything illegal. Any use which comes forward would have to be approved. Attorney Reid raised the issue of traffic impact. Attorney Murphy

said that the curb cut is for access, not to re-establish use of the property, and denial on that basis is unreasonable. Attorney Reid said he doesn't have any abiding confidence that what goes in there is going to go through all the proper channels. Ms. Worthington said that is her concern as well. Mr. Gaechter said he still wants to know if they can condition approval of the curb cut to the new owner coming back for additional approval, and he wants Town Counsel's opinion on this. He recommended that they continue this application until they consult with Town Counsel in public session. Attorney Murphy told Mr. Gaechter that Mr. Rice would like resolution as soon as the BOS can comfortably do so. Ms. Nolan was to contact Town Counsel. Ms. Nolan noted that Attorney Ford was on vacation. Mr. Gaechter said that they would get back to the two Attorneys with a date. Town Counsel will also be asked what the zoning is over the dead area (State Highway layout). Attorney Murphy explained to the BOS that Attorney Ford is being used as Town Counsel in this matter because Attorney Veara has a conflict; he has represented Mr. Rice before.

Condominium Conversion: Big Fisherman, 148 Shore Road: Attorney Murphy explained that this application is for the Big Fisherman motel, and the conversion is for just the motel building itself. The house is on a separate property. The parking plan and septic plan have both been approved. The BOH was concerned that the water connection served both properties. A separate connection for the motel has since been approved. Mr. Palmer noted that this was not an expansion of use. Attorney Murphy said there will be five units, and the seasonal covenant has been signed by the Perrys. Unit #5 has been designated as the Manager's unit and is the only one that can be occupied year-round. Unit 5 is the one that is on the short leg of the building. **Mr. Gaechter moved to approve the application and seasonal covenant for The Big Fisherman motel with the understanding that unit 5 is in the short leg, and is incumbent upon zoning relief by special permit as required in the Building Commissioner's reference to Section 30.7A and 40.3A. Mr. Hartman seconded it. Vote: 5-0, unanimous.**

Marine Oil Spill Response Trailer: Chief Prada requested that the Board approve a contract with the State for the use of a spill trailer. He doesn't have all the answers yet, but some training is available with it which will be done at the Harbor. The 20 ft. trailer is full of all sorts of equipment and supplies and the trailer and contents are quite heavy. Ms. Nolan told the Board that Town Counsel has reviewed the contract and a federal contract cannot be modified because that would make it void; Counsel had very few comments to make about it anyway. Chief Prada said it was the usual contract for State things. Ms. Worthington asked where it was going to live. Chief Prada thought it would go either behind the PSF or at the Harbor. **Mr. Gaechter moved to approve the contract and authorize the Chair to sign it. Mr. Hartman seconded it. Vote: 5-0, unanimous.**

Appointments: Ms. Worthington moved to reappoint Norm Edinberg, Bill Evaul, Jerry Nelson, Michael Peters, Shirley Smith, and Patricia Wheeler to the Truro Concert Committee. Mr. Hartman seconded it. **Vote: 5-0, unanimous.**

Town Administrator's Report: (no action items)

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Mr. Gaechter directed Ms. Nolan to contact the post office and see when they want to come and brief the Board.

Selectmen/Liaison Reports: (no action items)

Next week's agenda: Request to use town property, PH on entertainment license

At 7:54 p.m. Mr. Gaechter moved to adjourn. Mr. Hartman seconded it. Vote: 5-0, unanimous.

Alfred Gaechter, Chairman

Gary Palmer, Vice-Chairman

Christopher R. Lucy, Clerk

Curtis Hartman

Janet W. Worthington

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Town of Truro